missing; seven pieces of air pipes on starboard tanks were missing and the openings plugged; only 46 (out of 994) pieces of logs remained on board with loose lashing attached on them; several lengths of cables and chains were lying on deck; the Northwest crawler crane on the barge was generally damaged; the barge was generally indented and the barge was floating at 11 feet aft and 8½ feet forward. Based on all these information he concluded: "We are of the opinion that the loss of the cargo was attributable to the heavy weather prevailing during the period the vessel was proceeding to Singapore."

Captain William Peter Clark, another witness called by the appellants, commented that the conclusion of Mr. Yong Yoke Tong was not correct. Captain Clark's evidence was to the effect that the Master's log book and Protest Note in respect of the "Donna" could not be an accurate record of the conditions actually experienced by the "Donna." In our view on the evidence the learned Judge was right in disagreeing with Captain Clark. Captain Clark agreed with Mr. Foong Sze Fook regarding the tropical storms if the log book account of the "Donna" is correct.

It appears to us (as it did to the learned Judge) that the best evidence which supported the entries in the log book of the "Donna" were the cables sent by the Master to his employers during the voyage. There is no reason to believe that the entries in the log book were fabricated. The probabilities are that the two vessels went through a tropical storm, which was fortuitous, on their journey from Pemangkat to Singapore. In our judgment the loss was occasioned by the perils of the sea.

In the result the appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Godwin & Co.; Y.A. Cheong.*

TAN KOON SWAN v. PUBLIC PROSECUTOR

[C.C.A. (Wee Chong Jin C.J., Sinnathuray & Chua JJ.) October 16, 1986]

[Singapore – Criminal Appeal No. 16 of 1986]

Criminal Law and Procedure – Criminal breach of trust – Sentencing – Principles applied.

Penal Code, ss. 109 & 406 – Criminal breach of trust – Sentence.

In the present case the accused, Tan Koon Swan, was charged and convicted for the offence of abetting a director of a public listed company, Pan Electric Industries Ltd. (Pan El), in the commission of the offence of criminal breach of trust involving $144,852.88, which was the interest due to a stockbroking company in connection with the acquisition of shares by a Pan El subsidiary.

The accused was sentenced to 2 years' imprisonment and a fine of $500,000 ([1987] 1 M.L.J. 18) The accused appealed against the sentence.

Held, dismissing the appeal: (1) the Court as an appellate court when considering an appeal as to the sentence imposed by a trial court should act upon the following principles: The Court can and will interfere if it is satisfied that (a) the sentencing Judge has made the wrong decision as to the proper factual basis for sentence; (b) there has been an error on the part of the trial Judge in appreciating the material placed before him; (c) the sentence was wrong in principle; (d) that the sentence imposed was manifestly excessive;

(2) in the present case, having regard to all the circumstances of the case, the sentence was not excessive.

COURT OF CRIMINAL APPEAL.

M. Karthigesu for the appellant.

Glenn Knight (Deputy Public Prosecutor) for the Public Prosecutor.

Cur. Adv. Vult.

Wee Chong Jin C.J.: (delivering the Judgment of the Court): This is an appeal against the sentence imposed by Mr. Justice Lai on a plea of guilty by the appellant to a charge of abetting a director of a public listed company, Pan Electric Industries Ltd. ('Pan-El'), who was also a director of other companies which are subsidiaries of Pan El in the commission of the offence of criminal breach of trust. The charge related to breach of trust in respect of $144,852.88 which was the interest due to a stockbroking company in connection with the acquisition of 3 million Grand United Holdings Ltd ('GUH') shares for $4,778,895 by a Pan El subsidiary Orchard Hotel (S) Pte. Ltd.

The sentence imposed on the appellant was one of 2 years' imprisonment and a fine of

$500,000; the maximum sentence permissible under the law was one of 3 years' imprisonment and, so far as the fine is concerned, unlimited.

First, it is appropriate to state the principles upon which this Court, as an appellate court, should act when considering an appeal as to the sentence imposed by a trial court. It is axiomatic that each case depends on its own facts. It is also an elementary principle that an appellate court can and will interfere if the sentence imposed was not justified by law. Mr. Knight has referred us to a passage in *Archbold,* which we accept, setting out the principles upon which an appellate court acts.

One principle is that the Court can interfere if it is satisfied that the sentencing Judge has made the wrong decision as to the proper factual basis for sentence. In relation to this principle, it has not been shown to our satisfaction by Mr. Karthigesu, who has related in detail the facts which were put before Lai Kew Chai J. that he imposed the sentence on a basis other than the proper factual basis. It is to be observed that the facts set out in the Statement of Facts which was read out to the learned Judge were unequivocably accepted by the appellant.

Another principle is that the Court can interfere where it is satisfied that there has been an error on the part of the trial Judge in appreciating the material placed before him. The judgment of the trial Judge sets out fully, and in our opinion, accurately, the background facts which led to the charge against the appellant, which was a misuse of Pan El funds in circumstances which amounted to criminal breach of trust. The funds were used to create an artificial price for the shares of GUH. It was accepted by the learned Judge that it was done for the personal benefit of the appellant.

It was the appellant who gave instructions to Tan Kok Liang to go into the open market and manipulate the market price of GUH shares and by raising the price, a result of which was favourable for the appellant. So we are not satisfied that the trial Judge erred in any way in appreciating the material placed before him.

Also, having regard to the facts placed before Lai Kew Chai J. which were undisputed by the appellant, the learned Judge found that the offence was not an unpremeditated one in so far as the appellant was concerned.

Another principle is that the Court can interfere if it is satisfied that the sentence was wrong in principle. This has not been shown, and in our opinion, the sentence was one which in no respect can be said to be wrong in principle.

The last principle which we need to refer to is that the Court if satisfied that the sentence imposed was manifestly excessive can interfere.

Having regard to all the circumstances of the case, in particular, having regard to the commercial matrix the background facts and the fact that the offence was committed in order to manipulate the market price of a publicly listed company in Singapore we are of the opinion that the sentence which the trial Judge imposed – of 2 years' imprisonment and $500,000 fine – was not excessive, let alone manifestly excessive.

In the result, this appeal must be dismissed and the sentence affirmed.

Appeal dismissed.

Solicitors: *Cooma, Lau & Loh & M. Karthigesu.*

MOUNT ELIZABETH (PTE). LTD. v. THE COMPTROLLER OF INCOME TAX

[A.C.J. (Chan Sek Keong J.C.) September 5, 1986]

[Singapore – Civil Appeal No. 19 of 1985]

Revenue Law – Income Tax – Additional assessment on surplus resulting from sale of flats – Whether capital receipt or trading profits – Whether sufficient evidence present to justify imposition of income tax.

The appellant which was incorporated on July 8, 1970 developed a block of high-rise apartments on the property known as "High point." The sale of the flats commenced in 1971. Of the 59 apartments constructed 51 were sold between 1971 and 1973 and 8 were retained by the appellant. Six of the retained flats were sold in 1980. On November 27, 1981 the Comptroller of Income Tax (the Comptroller) made an additional assessment for the year of assessment 1981 against the appellant in respect of the profits derived from the sale of 6 of the 8 Highpoint flats. The appellant objected to the additional assessment and appealed to the Income Tax Board of Review (the Board).

Before the Board, counsel for the appellant contended that the surplus from the sale of the 6 flats was a capital accretion on the ground that the appellant's intention from the start was to develop some flats for sale and to retain some flats for investment and that the appellant was carrying on two activities *i.e.* (1) the principal activity of proper-